

AO 106 (Rev. 04/10) Application for a Search Warrant

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UNITED STATES DISTRICT COURT

AUG -1 2016

for the

Western District of Washington

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTONBY In the Matter of ~~THE~~ Search of(Briefly describe the property to be searched
or identify the person by name and address)

Instagram Account: DGH0STBARBER187

Case No.

MI16-337

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See Attachment A, which is incorporated by reference.

located in the Western District of Washington, there is now concealed (identify the person or describe the property to be seized):

See Attachment B, which is incorporated by reference.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
☐ contraband, fruits of crime, or other items illegally possessed;
☒ property designed for use, intended for use, or used in committing a crime;
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section
22 USC 2778(b)(2),
18 U.S.C. 554
18 USC 371

Offense Description
Arms Export Control Act; Smuggling; Conspiracy to do the Same

The application is based on these facts:

See Affidavit of Special Agent Grigore, which is incorporated herein by reference.

- ☒ Continued on the attached sheet.
☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Applicant's Signature

ATF Special Agent Claudia Grigore

Printed name and title

Sworn to before me and signed in my presence.

Date:

Aug 1, 2016

Judge's signature

City and state: Seattle, Washington

Magistrate Judge Mary Alice Theiler

Printed name and title

1 in the following paragraphs and in Attachment A. This affidavit is made in support of an
2 application for a search warrant under 18 U.S.C. §§ 2703(a), (b)(1)(A), and (c)(1)(A), to
3 require Instagram to disclose to the government records and other information in its
4 possession, including the contents of communications, pertaining to the subscriber or
5 customer associated with the SUBJECT ACCOUNT.

6 3. The facts set forth in this Affidavit are based on my own personal
7 knowledge; knowledge obtained from other individuals during my participation in this
8 investigation, including other law enforcement officers; interviews of cooperating
9 witnesses; review of documents and records related to this investigation; communications
10 with others who have personal knowledge of the events and circumstances described
11 herein; and information gained through my training and experience. Because this
12 Affidavit is submitted for the limited purpose of establishing probable cause in support of
13 the application for a search warrant, it does not set forth each and every fact that I or
14 others have learned during the course of this investigation.

15 4. Based on my training and experience, and the facts as set forth in this
16 affidavit, there is probable cause to search the information described in Attachment A for
17 evidence of the fruits and instrumentalities of violations of violations of the Arms Export
18 Control Act ("AECA"), Title 22, United States Code, Section 2778, and Title 22, Code of
19 Federal Regulations, Section 127.1, as well as Title 18, United States Code, Section 554,
20 and Title 18, United States Code, Section 371, conspiracy to commit the aforementioned
21 violations.

22 5. As set forth below, there is probable cause to believe that the user of the
23 SUBJECT ACCOUNT is engaged in a scheme to smuggle firearms out of the United
24 States to Barbados.

25 **RELEVANT LAW**

26 6. The AECA generally prohibits the export of defense articles and services
27 that are designated by the President. *See* 22 U.S.C. § 2778(b)(2). The AECA provides
28 for criminal penalties for willful violations of the Act. *See* 22 U.S.C. § 2278(c).

1 7. The Department of State, exercising for the President the above authority
2 under the AECA, has promulgated the International Traffic in Arms Regulations
3 (“ITAR”), 22 C.F.R. § 120.1 *et seq.* These regulations include the Munitions List, which
4 consists of categories of defense articles and services that cannot be exported without a
5 license issued by the Department of State’s Office of Defense Trade Controls (“DDTC”).
6 See 22 C.F.R. §§ 121.1, 123.1, 127.1.

7 8. Category I of the Munitions List includes firearms and their components.
8 As a result, the export of firearms and/or their components generally requires an export
9 license issued by the DDTC. There is an exemption for shipments of firearms
10 components valued under \$100 in the aggregate. Some firearms components, such
11 barrels, are classified as “significant military equipment” and are not eligible for the
12 exemption.

13 9. Title 18, United States Code, Section 554 prohibits anyone who
14 fraudulently or knowingly exports or sends from the United States, or attempts to export
15 or send from the United States, any merchandise, article, or object contrary to any law or
16 regulation of the United States.

17 10. Title 15, Code of Federal Regulations, Section 30.6 provides that a shipper
18 exporting items must provide the accurate value and description of the items that were
19 shipped.

20 SUMMARY OF PROBABLE CAUSE

21 11. On June 20, 2016, an ATF confidential informant (“CI”) informed me that
22 an individual identifying himself as “Ron,” contacted the CI through Instagram
23 messaging, and expressed interest in purchasing a firearm that the CI had posted on
24 his/her social media account. “Ron” also expressed interest in developing a relationship
25 with the CI in which firearms would be sent to him in Barbados, contrary to U.S. export
26 laws. Specifically, “Ron,” using the SUBJECT ACCOUNT, wrote: “Yes I’m looking to
27 [sic] some firearms.” “Ron” said that he needed “someone who sell and sip,” *i.e.*, ship,
28 and described the potential business relationship as making “money on the low.” “Ron”

1 informed the CI that "the guy I work with calling too much money.... So I don't work
2 with him know more lol." "Ron" said that he started messaging "some people b4 but
3 people playing games," indicating that he had contacted multiple individuals online,
4 looking for a new supplier.

5 12. On June 21, 2016, the CI allowed ATF to access his/her account for the
6 purpose of establishing communication with "Ron." Additionally, the CI sent a message
7 to "Ron" at the SUBJECT ACCOUNT with a picture of a firearm. The same day, "Ron"
8 responded via Instagram messaging, "Yes I'm interested get back to me ASAP...Tell me
9 about the pic u sent me some price and tell me how the shipping God...Gos* [likely
10 "Goes"]."

11 13. On June 22, 2016, a Homeland Security Investigations undercover agent
12 (UCA), using the CI's Instagram account, responded to "Ron's" message: "[S]o my
13 friends need to know more about what quantities you are looking to get. Send me your
14 contact information so I can provide it to my friend and you two can communicate
15 directly. Also I have tried to follow you but you are still blocked." The same day, "Ron,"
16 using the SUBJECT ACCOUNT, answered "Ok I'm comin to ny the 10th.... My number
17 is 12462637230... I need like one to 3 at a time."

18 14. On June 23, 2016, UCA using CI's Instagram account, messaged "Ron" at
19 the SUBJECT ACCOUNT, informing him "I have passed your number off to my friends.
20 They will reach out soon. Nyc? I know some people there as well but don't know if they
21 ship things."

22 15. On June 24, 2016, "Ron," using the SUBJECT ACCOUNT, responded to
23 the UCA's message, through Instagram messaging: "Hook....I'm going to new jersey...
24 Ohok*."

25 16. On June 28, 2016, the UCA started text messaging "Ron" at 12462637230,
26 the number "Ron" provided while exchanging messages using the SUBJECT
27 ACCOUNT. On the same day, UCA using CI's Instagram account messaged "Ron" at
28

1 the SUBJECT ACCOUNT: "Did my friend reach out?." On June 29, 2016, "Ron," using
2 the SUBJECT ACCOUNT, responded to the UCA: "Hey yes He did."

3 17. Between June 28, 2016, and July 21, 2016, the UCA and "Ron" exchanged
4 numerous messages, via instant messaging, at telephone number 12462637230. "Ron"
5 told the UCA that he had a previous supplier of firearms in Texas that misled him, and
6 kept his money. UCA and "Ron" agreed to meet in New York City, in the near future, to
7 further discuss prices of firearms to be purchased, shipping methods, and payment for the
8 firearms shipped to Barbados. On July 12, 2016, "Ron" provided UCA with a list of
9 firearms that he was interested in purchasing, with the first order being: "380 with
10 infrared The name is Bodyguard 3 of those three 9s three 17s and three 40s." "Ron"
11 indicated that he would increase his order once the first order would get through U.S. and
12 Barbados Customs, and arrive in Barbados.

13 18. According to Department of State, Ronald Nigel Price ("Price") received a
14 U.S. B1/B2 non-immigrant visa from U.S. Consulate in Bridgetown, Barbados, on June
15 21, 2016, and valid until June 8, 2026. The UCA compared Price's visa application
16 photograph with the photographs "Ron" posted on the SUBJECT ACCOUNT, and
17 believed "Ron" was this individual. According to Department of State records, Price is a
18 citizen of Barbados and resides in Barbados.

19 19. A separate ATF investigation of firearms smuggling into Barbados
20 identified Price as one of the individuals who wired money to the subject of that ATF
21 investigation, in Houston, Texas. Notably, "Ron" told the UCA on July 8, 2016: "[L]ike
22 this my friend was supplier his supplier from Texas so I was going through my friend I
23 don't know how them getting it here all I do is send the money to Texas and collect from
24 my friend to sell but I want to do my own thing".

25 20. A check with Directorate of Defense Trade Controls (DDTC) has
26 confirmed that Price has never applied for an export license, including to export any
27 firearms.
28

INSTAGRAM'S POLICIES AND PROCEDURES

21. I have reviewed materials relating to Instagram's policies and procedures, and are thus aware of the following:

22. Instagram owns and operates a free-access social-networking website of the same name that can be accessed at <http://www.instagram.com>. Instagram allows its users to create their own profile pages, which can include a short biography, a photo of themselves, and other information. Users can access Instagram through the Instagram website or by using a special electronic application ("app") created by the company that allows users to access the service through a mobile device.

23. Instagram permits users to post photos to their profiles on Instagram and otherwise share photos with others on Instagram, as well as certain other social-media services, including Flickr, Facebook, and Twitter. When posting or sharing a photo on Instagram, a user can add to the photo: a caption; various "tags" that can be used to search for the photo (e.g., a user made add the tag #vw so that people interested in Volkswagen vehicles can search for and find the photo); location information; and other information. A user can also apply a variety of "filters" or other visual effects that modify the look of the posted photos. In addition, Instagram allows users to make comments on posted photos, including photos that the user posts or photos posted by other users of Instagram. Users can also "like" photos.

24. Upon creating an Instagram account, an Instagram user must create a unique Instagram username and an account password. This information is collected and maintained by Instagram.

25. Instagram asks users to provide basic identity and contact information upon registration and also allows users to provide additional identity information for their user profile. This information may include the user's full name, e-mail addresses, and phone numbers, as well as potentially other personal information provided directly by the user to Instagram. Once an account is created, users may also adjust various privacy and

1 account settings for the account on Instagram. Instagram collects and maintains this
2 information.

3 26. Instagram allows users to have “friends,” which are other individuals with
4 whom the user can share information without making the information public. Friends on
5 Instagram may come from either contact lists maintained by the user, other third-party
6 social media websites and information, or searches conducted by the user on Instagram
7 profiles. Instagram collects and maintains this information.

8 27. Instagram also allows users to “follow” another user, which means that they
9 receive updates about posts made by the other user. Users may also “unfollow” users,
10 that is, stop following them or block the, which prevents the blocked user from following
11 that user.

12 28. Instagram allow users to post and share various types of user content,
13 including photos, videos, captions, comments, and other materials. Instagram collects
14 and maintains user content that users post to Instagram or share through Instagram.

15 29. Instagram users may send photos and videos to select individuals or groups
16 via Instagram Direct. Information sent via Instagram Direct does not appear in a user’s
17 feed, search history, or profile.

18 30. Users on Instagram may also search Instagram for other users or particular
19 types of photos or other content.

20 31. For each user, Instagram also collects and retains information, called “log
21 file” information, every time a user requests access to Instagram, whether through a web
22 page or through an app. Among the log file information that Instagram’s servers
23 automatically record is the particular web requests, any Internet Protocol (“IP”) address
24 associated with the request, type of browser used, any referring/exit web pages and
25 associated URLs, pages viewed, dates and times of access, and other information.

26 32. Instagram also collects and maintains “cookies,” which are small text files
27 containing a string of numbers that are placed on a user’s computer or mobile device and
28 that allows Instagram to collect information about how a user uses Instagram. For

1 example, Instagram uses cookies to help users navigate between pages efficiently, to
2 remember preferences, and to ensure advertisements are relevant to a user's interests.

3 33. Instagram also collects information on the particular devices used to access
4 Instagram. In particular, Instagram may record "device identifiers," which includes data
5 files and other information that may identify the particular electronic device that was
6 used to access Instagram.

7 34. Instagram also collects other data associated with user content. For
8 example, Instagram collects any "hashtags" associated with user content (i.e., keywords
9 used), "geotags" that mark the location of a photo and which may include latitude and
10 longitude information, comments on photos, and other information.

11 35. Instagram also may communicate with the user, by email or otherwise.
12 Instagram collects and maintains copies of communications between Instagram and the
13 user.

14 36. On July 18, 2016, I served Instagram with a preservation request pursuant
15 to 18 U.S.C. § 2703(f), requiring Instagram to preserve all information associated with
16 the SUBJECT ACCOUNT.

17 37. As explained herein, information stored in connection with an Instagram
18 account may provide crucial evidence of the "who, what, why, when, where, and how" of
19 the criminal conduct under investigation, thus enabling the United States to establish and
20 prove each element or alternatively, to exclude the innocent from further suspicion. In
21 my training and experience, an Instagram user's account activity, IP log, stored electronic
22 communications, and other data retained by Instagram, can indicate who has used or
23 controlled the Instagram account. This "user attribution" evidence is analogous to the
24 search for "indicia of occupancy" while executing a search warrant at a residence. For
25 example, profile contact information, direct messaging logs, shared photos and videos,
26 and captions (and the data associated with the foregoing, such as geo-location, date and
27 time) may be evidence of who used or controlled the Instagram account at a relevant
28 time. Further, Instagram account activity can show how and when the account was

1 accessed or used. For example, as described herein, Instagram logs the Internet Protocol
2 (IP) addresses from which users access their accounts along with the time and date. By
3 determining the physical location associated with the logged IP addresses, investigators
4 can understand the chronological and geographic context of the account access and use
5 relating to the crime under investigation. Such information allows investigators to
6 understand the geographic and chronological context of Instagram access, use, and events
7 relating to the crime under investigation. Additionally, Instagram builds geo-location
8 into some of its services. Geo-location allows, for example, users to "tag" their location
9 in posts and Instagram "friends" to locate each other. This geographic and timeline
10 information may tend to either inculcate or exculpate the Instagram account owner. Last,
11 Instagram account activity may provide relevant insight into the Instagram account
12 owner's state of mind as it relates to the offense under investigation. For example,
13 information on the Instagram account may indicate the owner's motive and intent to
14 commit a crime (*e.g.*, information indicating a plan to commit a crime), or consciousness
15 of guilt (*e.g.*, deleting account information in an effort to conceal evidence from law
16 enforcement).

17 38. Based on the information above, the computers of Instagram are likely to
18 contain all the material described above with respect to the SUBJECT ACCOUNT,
19 including stored electronic communications and information concerning subscribers and
20 their use of Instagram, such as account access information, which would include
21 information such as the IP addresses and devices used to access the account, as well as
22 other account information that might be used to identify the actual user or users of the
23 account at particular times.

24 39. I anticipate executing this warrant under the Electronic Communications
25 Privacy Act, in particular Title 18, United States Code, Sections 2703(a), (b)(1)(A), and
26 (c)(1)(A), by using the warrant to require Instagram to disclose to the government copies
27 of the records and other information (including the content of communications)
28 particularly described in Section I of Attachment B. Upon receipt of the information

1 described in Section I of Attachment B, government-authorized persons will review that
2 information to locate the items described in Section II of Attachment B.

3 40. Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer
4 is not required for the service or execution of this warrant. Because the warrant will be
5 served on Instagram, who will then compile the requested records at a time convenient to
6 it, there exists reasonable cause to permit the execution of the requested warrant at any
7 time in the day or night.

8 **REQUEST FOR NONDISCLOSURE AND SEALING**

9 41. The government requests, pursuant to the preclusion of notice provisions of
10 Title 18, United States Code, Section 2705(b), that Instagram be ordered not to notify any
11 person (including the subscriber or customer to which the materials relate) of the
12 existence of this warrant for such period as the Court deems appropriate. The
13 government submits that such an order is justified because notification of the existence of
14 this Order would seriously jeopardize the ongoing investigation. Such a disclosure would
15 give the subscriber an opportunity to destroy evidence, change patterns of behavior,
16 notify confederates, or flee or continue his flight from prosecution. As noted above, this
17 investigation remains covert, and the target is located overseas. He almost certainly
18 would not travel to the United States to meet if he were aware of this investigation.

19 42. It is further respectfully requested that this Court issue an order sealing,
20 until further order of the Court, all papers submitted in support of this application,
21 including the application and search warrant. I believe that sealing this document is
22 necessary because the records relate to an ongoing investigation that includes both United
23 States and foreign targets. Premature disclosure of the contents of this affidavit and
24 related documents may have a significant and negative impact on the continuing
25 investigation and may severely jeopardize its effectiveness.

ATTACHMENT A
Premises To Be Searched

This warrant applies to information associated with the Instagram profile with username: DGH0STBARBER187, that is stored at premises owned, maintained, controlled, or operated by Instagram, LLC, a company that is owned by Facebook, Inc. and headquartered in Menlo Park, California, including, but not limited to, any data that is being preserved pursuant to a preservation letter.

Attachment A
In re search of Instagram Account
USAO 2016R00772

ATTACHMENT B
Documents To Be Searched

I. Information to be disclosed by Instagram

To the extent that the information described in Attachment A is within the possession, custody, or control of Instagram, LLC, including any messages, records, files, logs, or information that have been deleted but are still available to Instagram, LLC, or have been preserved pursuant to a request made under 18 U.S.C. § 2703(f), Instagram, LLC is required to disclose the following information to the government for each account listed in Attachment A:

- a. All identity and contact information, including full name, e-mail address, physical address (including city, state, and zip code), date of birth, phone numbers, gender, hometown, occupation, and other personal identifiers;
- b. All past and current usernames associated with the account;
- c. The dates and times at which the account and profile were created, and the Internet Protocol ("IP") address at the time of sign-up;
- d. All activity logs including IP logs and other documents showing the IP address, date, and time of each login to the account, as well as any other log file information;
- e. All information regarding the particular device or devices used to login to or access the account, including all device identifier information or cookie information, including all information about the particular device or devices used to access the account and the date and time of those accesses;
- f. All data and information associated with the profile page, including photographs, "bios," and profile backgrounds and themes;
- g. All communications or other messages sent or received by the account;
- h. All user content created, uploaded, or shared by the account, including any

comments made by the account on photographs or other content;

- i. All photographs and images in the user gallery for the account;
- j. All location data associated with the account, including geotags;
- k. All data and information that has been deleted by the user;
- l. A list of all of the people that the user follows on Instagram and all people who are following the user (i.e., the user's "following" list and "followers" list), as well as any friends of the user;
- m. A list of all users that the account has "unfollowed" or blocked;
- n. All privacy and account settings;
- o. All records of Instagram searches performed by the account, including all past searches saved by the account;
- p. All information about connections between the account and third-party websites and applications; and,
- q. All records pertaining to communications between Instagram, LLC and any person regarding the user or the user's Instagram account, including contacts with support services, and all records of actions taken, including suspensions of the account.

II. Information to be seized by the government

All information described above in Section I that constitutes evidence of the fruits and instrumentalities of violations of the Arms Export Control Act, Smuggling (18 U.S.C. § 554), and Conspiracy, including, for the user ID identified on Attachment A, information pertaining to the following matters:

- (a) the purchase, sale, and/or export of firearms to Barbados from the United States, including, but not limited to, discussions and negotiations to purchase firearms and the handling of any funds associated with firearms sales;
- (b) knowledge of U.S. export laws;
- (c) evidence indicating how and when the Instagram account was accessed or

used, to determine the chronological and geographic context of account access, use, and events relating to the crime under investigation and to the Instagram account owner;

(d) Evidence indicating the Instagram account owner's state of mind as it relates to the crime under investigation;

(e) The identity of the person(s) who created or used the user ID, including records that help reveal the whereabouts of such person(s).